IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION(BAIL) NO. 147 OF 2007

Shri Kavesh Vasudev Gosavi,
presently in police custody
through brother Mahendra V.
Gosasvi. ... Applicant

versus

State through Public Prosecutor
and another. ... Respondents

Mr. Arun Bras De Sa, Advocate for the Applicant.

Mr. C. A. Ferreira, Public Prosecutor for the State.

CORAM : N. A. BRITTO, J.

DATE : 29TH JUNE, 2007.

ORAL ORDER

Heard the learned Counsel on behalf of the applicant and the learned Public Prosecutor on behalf of the respondent.

2. The applicant herein was arrested on 8-6-2007 in connection with investigations of Crime No.63/2007 under Sections 376, 384 r/w 34 I.P.C. and was in police custody from 8-6-2007 until 21-6-2007. His application for bail filed on 14-6-2007 has been rejected by the learned Sessions Judge by Order dated 20-6-2007.

3. Although the complaint of the victim has been registered under Sections 376, 384 r/w 34 I.P.C, there does not appear to be any allegation of rape against the applicant. A perusal of the complaint filed by the victim dated 8-6-2007, the supplementary statements dated 9-6-2007, 22-6-2007 as well as 24-6-2007 also do not show any such allegation.

4. As per the complaint, as accused Vinesh Dessai was having sex with the victim, he received a phone call on his mobile and the said accused informed him to come within 10 minutes, and that was at a hotel in Colva where the victim was allegedly taken by the said Vinesh Dessai on the pretext of giving to her Rs.10,000/- which she had requested him to give. According to the victim, the caller came within 5 minutes whose description she has given and he identified himself to be a policeman and directed the victim to give him Rs.50,000/- or else he would take the victim and the said accused Vinesh Dessai to Panaji and make them roam and spoil their name and thereafter the accused Vinesh Dessai took off his chain and the mobile and handed over to the said person who represented to be a policeman and directed the victim also to do the same whereupon she too removed her two gold chains and mobile phone and gave the same to the said person who had represented to be a policeman. Thereafter, the applicant Kavesh V. Gosavi is stated to have asked the victim whether she would be able to give the said alleged policeman the sum of Rs.50,000/- to which the victim replied that she would encash the amount by cancelling the fixed deposits. According to the victim, the victim is a widow, of 31 years of age having four minor children whose husband had expired and who had received on account of the death

of her husband insurance money of about Rs.9,00,000/- which she has invested in fixed deposits in the name of her children. After the victim gave the said assurance, the said alleged policeman left the room while the applicant remained outside and thereafter reached the victim to Margao on the motorcycle on which the accused Vinesh Dessai had taken the victim to the said hotel.

5. The said victim as per her supplementary statement dated 22-6-2007 is stated to have identified one Almeida as the person who had posed himself as the policeman but by another supplementary statement dated 24-6-2007 she stated that the said Almeida was not the person who conducted the raid.

6. The accused Vinesh Dessai as well as the applicant appear to have been in police custody from 8-6-2007. One Maruti Vagon R car was also seized by the police from outside the said hotel. From the interrogation of the main accused, namely, the said Vinesh Dessai or for that matter from the interrogation of the applicant who has been in the custody of the police from 8-6-2007 or for that matter from the owner of the said Maruti Vagon R car it would not have been very difficult for the Investigation Officer to have found out as to who is the person who has posed himself to be a policeman.

7. The learned Sessions Judge has observed that there was no reason for the applicant to have volunteered to pay Rs.50,000/- when his role in the alleged sexual intercourse apparently was not spelt out and that the

nexus between the applicant and the said Vinesh Dessai is required to be thoroughly investigated. The allegation that the person who posed as policeman demanded Rs.1,00,000/- of which the victim was asked to pay Rs.50,000/- and the accused Vinesh Dessai Rs.50,000/- which the applicant agreed tom pay appeared only in the supplementary statement dated 9-6-2007. All that the victim had stated in her complaint is that the applicant confirmed with her if she would be able to give the alleged policeman the amount of Rs.50,000/- which she assured that she would pay by encashing the fixed deposits. There is also no allegation that the applicant demanded any amount from the said victim with a view to blackmail her, she having been caught in the company of the accused Vinesh Dessai, although in her supplementary statement dated 9-6-2007 the victim has stated that the applicant informed her on phone to hand over to him her share of Rs.50,000/-.

8. Considering the facts of the case and overall view of the matter, in my view, conditional bail could be granted to the applicant.

9. Before concluding a note is required to be made of certain disturbing features of this case. The learned Public Prosecutor has submitted that a statement of Janu Gaonkar, the brother-in-law of the victim, has not been recorded till date. One does not know the reason why the statement of the said witness has not been recorded till date. The learned Public Prosecutor, when inquired as to whether the victim was provided with any legal assistance submits that a social worker was present when her

statements were recorded. As already stated on 22-6-2007 the victim identified the said person who has posed as policeman but on 24-6-2007 retracted the said statements after she was taken to another Advocate.

10. The Apex Court in **Delhi Domestic Women's Forum** v. **Union of India and others**((1995) 1 SCC 14) had indicated certain broad parameters in assisting the victims of rape. Three of the said parameters could be reproduced:-

> 2. Legal assistance will have to be provided at the police station since the victim of sexual assault may might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.
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> 3. The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.
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> 4. A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable, etc.

11. The Apex Court had directed the third respondent in that case to evolve such a scheme so as to wipe out the tears of such unfortunate victims and thereafter the Union of India, was directed to examine the same and to take steps for the implementation of the said scheme. The District Judge and the Superintendent of Police are both members of the District Legal Services Authority. In case the scheme as contemplated by the Apex Court is not found in place, the District Legal Services Authority of both the Districts in this State should ensure that arrangements are made at least in terms of Clause 4 herein above.

12. A copy of this Order be sent to both the District Legal Services Authorities in this State.

13. Therefore, the applicant shall be released on bail upon execution of a bond of Rs.15,000/- with one surety in the like amount to the satisfaction of the learned Sessions Judge, Margao and with a condition that the applicant shall not directly or indirectly interfere with the investigations of the case and shall not contact the said victim in any manner whatsoever.

N. A. BRITTO, J.

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